

Age-Based Rules: Protection or Barriers to Development? **A Discussion Starter**

Introduction

At what age should a child be allowed to take a bus without an adult? Use the internet? Drive an ATV? Refuse medical treatment? Vote? Use marijuana? Be eligible for Medical Assistance in Dying? What should be the target age for restrictions in advertising unhealthy foods? How do we determine what is age-appropriate information about sexual and reproductive health? Should brain research be the sole basis for deciding minimum age for marijuana use or should other factors be considered as well?

Parents and schools often use age-based rules to regulate activities for children. In Canada there are many laws that permit or restrict activities based on the age of a young person, with various ages for various activities in various jurisdictions. There is no consistent framework for making those decisions.

A number of current policy debates in Canada include questions about minimum age. What are the guiding principles for determining age of eligibility or age restrictions for identified activities? To foster discussion, below are points for consideration and questions, based on the Convention on the Rights of the Child.¹

Principles for Consideration

Making rules based on ages often involves tension between important principles for children's rights. These include:

Evolving capacity: The Convention on the Rights of the Child establishes the principle of respect for the “evolving capacities” of children to make decisions for themselves and/or be guided by adults who have a duty to protect the best interests of children when they make decisions with and for children. Capacities can refer to many things such as: physical aspects, such as size; cognitive abilities, such as understanding the impacts of a decision, and maturity, such as ability to make independent decisions under the influence of peer pressures, adults with power over a young person, or other influences.

Sometimes it is assumed that persons under 18 have limited capacity, and persons over 18 have full capacity, both faulty assumptions. The concept of **evolving** capacity highlights its progressive development. It raises questions about how to assess evolving capacity. Age-based assumptions about the capacity of young people to make decisions need to be justified. Age is one predictor of capacity, but not the sole measure.

Age limits are often used in Canada as a proxy for capacity, e.g. age 18 for voting. Is age a useful proxy? Are there other ways of determining capacity that might be better than age limits, which tend to be arbitrary? What is the relationship between capacity and the context within which a child is making a particular decision? Under what circumstances do age limits create barriers to full development or provide benefits for young people? When do the benefits of age restrictions outweigh the problems of using age as a proxy for capacity?

Protection from abuse of power: The Convention calls on states to set minimum ages to protect children in contexts where others in powerful positions might exploit or abuse children, such as the

criminal justice system, the military, and employment. Keeping children below identified ages out of such systems may be justified as a measure of protection. While the Convention says no one under 18 should be tried as an adult, many governments, including Canada and provinces, have set lower ages for holding young people criminally responsible for serious crimes. Minimum ages for employment vary widely across provinces, some as low as 12, with various qualifiers and criteria, as protection is balanced with the opportunity to learn skills through participation in workplaces. While Canada only deploys soldiers over the age of 18 into zones of hostility, it allows voluntary recruitment at age 16 or 17 with parental permission.

Developing the full potential of a child: The right of children to develop their full potential, a central goal of the Convention, leads to questions about age restrictions as barriers to full development, especially in areas such as restricted access to information, voting, full citizenship, and others.

Considering views of the child or children: Children's right to have their views considered when decisions are made that affect them is a central principle of the Convention. Many age-based rules are established without input from young people. There are also many age-related questions about the participation of children in these decisions, such as ways to consider the views of young children and the relative weight to be given to the views of young people and the findings of evidence-based research.

Best interests of the individual child and children as a group: States are obligated under the Convention to consider the best interests of each child and the best interests of children as a group. While minimum ages are often justified as being in the best interests of children as a group, they may not be in the best interests of an individual child.

How can these principles be applied when we make policies based on age? Tensions between protection and self-determination arise in setting age-based rules or laws for all children and in individual cases, such as cases involving free and informed consent for medical treatment. The Convention as a whole provides a useful framework for considering all aspects and impacts of such decisions. Processes such as Child Rights Impact Assessments (CRIAs) can help to identify and better assess impacts of proposed changes, but such processes do not exist in most jurisdictions in Canada and the Convention is rarely taken seriously in current policy formation processes.

Some Questions to Ask:

1. Is the need for protection well-established?
2. Is age restriction the most effective tool?
3. Are there other ways to achieve the desired objective?
4. Is individual capacity assessment an option?
5. How does age restriction impact other rights in the Convention?
6. Will an age restriction discriminate? Is the impact different for different groups of children?
7. Does an age restriction create barriers to development or exercise of other rights?

ⁱ The CCRC recommends a detailed discussion paper on minimum ages and children's rights for further study. Child Rights International Network. *Age is Arbitrary: Setting Minimum Ages*; a Discussion Paper. CRIN; c. 2015. Available at: https://www.crin.org/sites/default/files/discussion_paper_-_minimum_ages.pdf.